

Public Minutes of the Investigation Committee

Date of hearing: 07 May 2021

Name of Doctor	Dr George Philip Smith
Doctor's UID	7458567

Committee Members	Mr David Hull
	Dr Nitisha Patel
	Ms Toni Foers

Legal Assessor	Mr David Mason
Panel Secretary	Ms Gemma Wolstenholme

Attendance and Representation

GMC Representative	Mr Nick Walker
Doctor's attendance	Attended
Doctor's representative	Mr Philip McGhee

Outcome	Warning
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Determination

Dr Smith,

- 1 At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **Mr Philip McGhee** on your behalf and those made on behalf of the GMC by **Mr Nick Walker, GMC Counsel**. It has accepted the advice of the Legal Assessor.

Background

- 2 On 1 and 14 October 2019 you consulted with a female patient (Ms A) in relation to concerns she may be suffering from stress/anxiety/depression. You diagnosed Ms A as suffering from a stress reaction to the break-up a month or so earlier of her relationship with her boyfriend.
- 3 On a date shortly after 14 October 2019 you contacted Ms A via Facebook messenger using her personal details without her consent. You communicated with Ms A via Facebook messenger on a number of other occasions, and in November 2019 she accompanied you to a Technology, Entertainment, Design ('TED')x talk.
- 4 The GMC received a referral dated 27 Dec 2019 from Health Education England (HEE) West Midlands which alleged that you had made inappropriate contact with a patient following two consultations at your place of work. This conduct came to light after your girlfriend at the time had seen messages and threatened to report you to the GMC. You then proceeded to report the incident to your manager.
- 5 On 17 December 2020, the GMC wrote to you in accordance with Rule 11 of the Rules and advised you that the Case Examiners were minded to issue you with a warning. Your legal representatives indicated on 25 January 2021, that you were not prepared to accept the proposed warning, and on 22 March 2021, the GMC advised you that your case had been referred to this Committee.

GMC Submissions

- 6 Under Rule 11 (7) (a), Mr Nick Walker on behalf of the GMC, took the Committee through the history of the case as outlined above. Under Rule 11 (7) (c), Mr Walker proceeded to outline why a warning was appropriate in this case. Mr Walker accepted that there is no definition of 'significant' in the Medical Act or in the Fitness to Practise Rules. However, he directed the Committee to the GMC guidance on warnings which is intended to help decision makers, at both the investigation and hearing stages, consider whether a warning is appropriate.

- 7** Mr Walker submitted that there has been a clear and specific breach of Good Medical Practice (GMP) of paragraphs 65, paragraph 120 of Confidentiality: good practice in handling patient information (2017), paragraph 14 of Maintaining a professional boundary between you and your patient (2013), and paragraph 10 of Doctors' use of social media (2013).
- 8** Mr Walker directed the Committee to your previous comments during the investigation where you accepted that you blurred the lines, due to your unhappiness in your personal life. Your comments are made in relation to your relationship in which you felt down, and this patient made you feel good about yourself. You recognised that you were seeking attention in this regard.
- 9** Mr Walker stated that the Committee would be *'right to be impressed'* with your remediation, but also rightfully concerned that should your personal circumstances decline again, however much sympathy the Committee may have toward your personal circumstances, they could not be satisfied that there is nil chance of repetition. Mr Walker submitted that these proceedings are not about punishing you in this regard, but are vital for upholding professional standards.
- 10** Though the patient stated that she did not consider herself vulnerable, Mr Walker submitted that she is not the best person to judge this. You were the medical professional in this circumstance, and she needed the professional distance that GMP requires. In this regard, Mr Walker submitted that a member of the public, appraised of the information in this case would be perturbed if the GMC took no further action.
- 11** Mr Walker submitted that your conduct here required a formal response to a serious departure from GMP and that the *'mitigating factors do not outweigh that need to give effect, the purpose of these proceedings.'* He submitted that the patient came to you having recently split from her boyfriend, displaying signs of poor mental health. On the second consultation she told you she was attracted to you. Within a few weeks of this consultation you had initiated contact with her. Mr Walker directed the Committee to the evidence provided today that you both went on to share photos and you then took it a step further arranging to meet the patient for what she perceived as a date. Mr Walker submitted that this behaviour only stopped because of your girlfriend making contact with the patient and that you only reported yourself to your employers once the same girlfriend threatened to report you to the GMC. Mr Walker submitted that throughout these various contacts with the patient, you knew that your conduct was inappropriate.
- 12** Mr Walker directed the Committee's attention to the test for issuing a warning at paragraph 16 of the GMC's Guidance on Warnings [March 2021] and submitted that a warning is appropriate when there has been a significant departure from GMP and that a formal response by way of a warning is the correct mechanism for the GMC to declare and uphold standards of behaviour expected from doctors.

- 13 Mr Walker submitted that the concerns raised in this case are sufficiently serious and if repeated would amount to impairment. Your conduct and behaviour fell far short of what is expected of a registered medical practitioner and represented a significant breach of various standards of good conduct expected of a registered medical practitioner.
- 14 Mr Walker invited the Committee to conclude that a warning is necessary and proportionate. Your conduct does not meet the standards expected of a doctor and a warning would serve to maintain the public's confidence in the profession, promote the standards expected of a doctor and send a message to the wider profession that this conduct is not acceptable.

Defence Submissions

- 15 Mr McGhee addressed the Committee under Rule 11, 7 (b, c) in its entirety for the submissions made on your behalf today and at the outset wished to emphasise from the start that you fully appreciated your conduct was unacceptable. Mr McGhee took the Committee through your relationship history leading up to the conduct that brought you to the attention of your regulator. Mr McGhee submitted that the events of the preceding three years took their toll on your self-esteem and, by October 2019, your confidence and self-esteem were at an all-time low. Whilst you do not seek to suggest that this excuses your behaviour, Mr McGhee submitted that these factors provide an explanation as to why you behaved in a way that you would not otherwise even contemplate.
- 16 Mr McGhee advised the Committee that you accept the allegation and have never *'sought to challenge or shy away from responsibility as shown by the fast track disciplinary hearing, evident of early recognition of conduct'*. Mr McGhee stated that it was right to say that the patient quickly improved by the second consultation. Notwithstanding the initial diagnosis, from the patient's own perspective she did not deem herself as particularly vulnerable and the only issue that has affected the patient has been the GMC investigation process itself. Mr McGhee submitted that the conduct was only non-consensual in the fact that it was unsolicited and that you asked the patient whether she minded, which she didn't. In this regard, your conduct was *'miles away from truly predatory behaviour'*, and it is right that in all this inappropriate contact, no clinical information was exchanged.
- 17 Mr McGhee proceeded to take the Committee through the extensive mitigation that you have demonstrated during this investigation. Mr McGhee submitted that you have shown insight at an early stage, evidence of which can be found throughout the GMC correspondence provided. You stated that you had allowed issues in your personal life to impact on your conduct in the workplace, and that you should have sought help at an earlier stage which hopefully would have meant that this lapse of judgement did not occur.

- 18** Mr McGhee submitted that you have demonstrated a genuine expression of regret and apology and reiterated that apology, profusely and unreservedly at today's proceedings. The shame of admitting your conduct, the extension of your training period, the salutary effect of both the GMC and employer investigations and subsequent warning from your employer have all served to ensure that there have already been consequences of your conduct. Mr McGhee explained that due to these processes you have clearly looked at your conduct, acknowledged your behaviour and offered a clear and unreserved apology from the beginning.
- 19** Mr McGhee respectfully submitted that you have shown full insight and that given your previous good history and this clearly isolated behaviour more than a year on from the initial conduct, there is no likelihood of repetition.
- 20** Mr McGhee directed the Committee to paragraph 25 of the Guidance on Warnings which states that in deciding whether to issue a warning, the Committee should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. Mr McGhee explained that your current posting is a fixed-term post and ends in May 2021. You have long held an aspiration to move to Canada and fear that a Warning will impact on your ability to obtain a medical licence in Canada and to obtain future employment.
- 21** Whilst not seeking to suggest that the concerns raised are not serious, Mr McGhee submitted that given the extensive mitigation displayed in this case and with no prospect of repetition, for the Committee to give you a Warning today serve as a disproportionate response.

Committee Determination

- 22** At the outset, The Committee accepted that there is no definition of 'significant' in the Medical Act or in the Fitness to Practise Rules and that there is a spectrum of conduct in which a Warning may be appropriate.
- 23** The Committee accepted that the patient herself testifies she did not feel targeted or vulnerable and was aware from family members of the ethical inappropriateness of the conduct. By the patient's own admission she was flirting with you and constituted the TEDx talk as a date. Through the evidence provided today, the Committee has determined that there is not enough information to ascertain that the patient was particularly vulnerable. However, they did consider that the nature of the consultation and the reasons what brought the patient to your attention should have raised red flags for a medical professional in your position.
- 24** The Committee considered that there was a period of reflection between your last consultation with the patient and your subsequent contact with her on Facebook. The Committee therefore did not consider that this was a lapse in judgement, it did not appear to be a snap decision as you sought the patient out on Facebook after this period of reflection. You used Facebook to facilitate this relationship, breaching GMP

supplementary guidance *'Maintaining a professional boundary between you and your patient'* (2013) paragraph 14 and *'Doctors' use of social media'* (2013) paragraph 10.

- 25** The Committee has concluded that in this case your actions do breach paragraph 65 of GMP. The Committee does accept, although there is no definition of 'significant' in the Medical Act or in the Fitness to Practice Rules, given the reasons above, your inappropriate relationship with a patient represented a significant departure from GMP paragraph 65 and as the paragraphs in the supplementary guidance are mandatory your conduct did also represent a significant departure from GMP supplementary guidance *'Maintaining a professional boundary between you and your patient'* (2013) and *'Doctors' use of social media'* (2013) as your conduct in this regard does not meet the standards expected of a Doctor and could serve to damage the public's trust and confidence in the profession.
- 26** The Committee considered your breach of GMP supplementary guidance, Confidentiality: good practice in handling patient information (2017) paragraph 120 which stated that *'You must not access a patient's personal information unless you have a legitimate reason to view it.'* The Committee concluded that you did breach this guidance as you only knew the patients name due to the consultation. However, the Committee concluded that it has not been suggested you accessed any medical records illegitimately. You used the patient's name, nominal info for a Facebook search. The Committee accepted that no sensitive or protected information was used. As you clearly had the opportunity to access further sensitive information such as her address and telephone number, which the Committee were satisfied did not occur, this breach was not considered to be significant.
- 27** The Committee must be satisfied that the particular conduct, behaviour or performance approaches, but falls just short of, the threshold for the realistic prospect test. The realistic prospect test requires a genuine possibility of a finding of impaired fitness to practise, justifying action on the doctor's registration.
- 28** After being satisfied that your conduct represented a significant departure from Good Medical Practice under paragraph 65 and GMP supplementary guidance, the Committee decided that your conduct approaches but falls just short of the threshold for the realistic prospect test. If your conduct was to be repeated, it would likely result in a finding of impaired fitness to practice which requires the Committee to consider how this conduct may affect public confidence in the profession and the reputation of the profession. The Committee determined that the test for a warning in this case has been met.
- 29** The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:

Protecting, promoting and maintaining the health, safety and well-being of the public

Promoting and maintaining public confidence in the medical professions, and

Promoting and maintaining proper professional standards and conduct for members of that profession

- 30** The Committee determined that an informed member of the public would be concerned at the conduct displayed in this case and that there would be an expectation for the GMC to uphold professional standards.
- 31** The Committee accepted your genuine regret and apology. It came at an early stage in proceedings and has been maintained throughout. The Committee considered your conduct was isolated in the sense of the one patient. Whilst the Committee did accept there is a low likelihood of repetition in the future it cannot be entirely satisfied that you would not behave in the same manner were you to find yourself in a similar situation. The Committee cannot exclude the prospect of repetition completely as it has not seen evidence before it today that you have had to manage further personal stress.
- 32** Your remediation work is to be credited and the Committee has accepted the positive and impressive testimonials put forward to it today. The Committee has also taken into account your previous good character, that you have not been brought to the attention of your regulator before today's proceedings and the apology you provided.
- 33** The Committee has concluded that if this behaviour was indeed a lapse in judgement, you had a number of opportunities to end contact with the patient and this did not occur. In her statement, the patient stated that she had advised you needed to sort your relationship out before any further dates, to which you replied 'okay' and this point has not been contested today. You proceeded to respond to messages without seeking further advice and only brought it to the attention of your employers, as explained in submissions provided today on your behalf that this was due to your then girlfriend threatening to report you to the GMC. You have accepted on a number of occasions that your behaviour was inappropriate and the Committee therefore cannot be satisfied that if it had not been for the intervention of your ex-partner that you would have ceased this contact or gained insight into your behaviour.
- 34** The Committee determined that there were a number of opportunities to cease contact which you disregarded. In this regard, the Committee considers that the sequence of events which began with your initiation of the Facebook contact, the maintenance of this Facebook chat which included the sharing of photos, the subsequent meeting at the TEDx talk and the discussion of further dates, demonstrated a course of conduct it found particularly aggravating in this case.
- 35** In deciding whether to issue a warning the Committee must apply the principle of proportionality and balance the interests of the public with those of the practitioner.
- 36** The Committee considered the fairness of issuing you with a warning and noted that a warning does not prevent a doctor from holding a licence to practise and does not place any restrictions on their registration. Although warnings do not restrict a

doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.

37 The Committee has carefully considered all the facts and has concluded that on balance the aggravating factors outweigh the mitigating factors provided in this case. The Committee has considered whether in all the circumstances a warning is proportionate and has determined that the nature of your conduct was so serious that a warning is necessary to declare and uphold proper standards and highlight to the wider profession the standards to be expected of a doctor.

38 The warning will be documented as follows:

'On 1 and 14 October 2019 you had consultations with a female patient (Ms A) in relation to concerns she may be suffering from stress/anxiety/depression. You diagnosed Ms A as suffering from a stress reaction to the break-up a month or so earlier of her relationship with her boyfriend.

On a date shortly after 14 October 2019 you contacted Ms A via Facebook messenger using her personal details without her consent. You communicated with Ms A via Facebook messenger on a number of other occasions, and in November 2019 she accompanied you to a Technology, Entertainment, Design ('TED')x talk.

Your conduct as outlined above does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.

The required standards are set out in Good medical practice and associated guidance. In this case, paragraph 65 of Good medical practice, paragraph 14 of Maintaining a professional boundary between you and your patient (2013), and paragraph 10 of Doctors' use of social media (2013) are particularly relevant:

Good medical practice

65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

Maintaining a professional boundary between you and your patient

14 You must consider the potential risks involved in using social media and the impact that inappropriate use could have on your patients' trust in you and society's trust in the medical profession. Social media can blur the boundaries between a doctor's personal and professional lives and may change the nature of the relationship between a doctor and a patient. You must follow our guidance on the use of social media.'

Doctors' use of social media (2013)

10 Using social media also creates risks, particularly where social and professional boundaries become unclear. You must follow the guidance in Maintaining a professional boundary between you and your patient.

Whilst these failings in themselves are not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmcuk.org/disclosurepolicy.

- 39** The GMC shall serve written notification of the Committee's decision upon the practitioner as soon as reasonably practicable.

That concludes the determination of the Investigation Committee in this case.